TO AMEND THE JUDGMENT FUNDS DISTRIBUTION ACT

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

H.R. 3731

A BILL TO AMEND THE JUDGMENT FUNDS DISTRIBUTION ACT

JULY 21, 1982
WASHINGTON, D.C.

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CONTENTS

	Page
H.R. 3731	2

WITNESSES

Cournoyer, Larry, chairman, Yankton Sioux Tribe	22
Krenzke, Theodore, Director of Indian Services, Department of the Interior	7
Smith, Kenneth L., Assistant Secretary for Indian Affairs, Department of the Interior	7
Prepared statement	8
Tullberg, Steven, attorney, Indian Law Resource Center	25

TO AMEND THE JUDGMENT FUNDS DISTRIBUTION ACT

JULY 21, 1982

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 9:40 a.m., in room 6226, Dirksen Senate Office Building, Senator William S. Cohen (chairman) presiding.

Present: Senator Cohen.

Staff present: Timothy C. Woodcock, staff director; Peter S. Taylor, general counsel; Patricia Zell, Jane Wrenn, and Michael Mahsetky, staff attorneys; Jeffrey Bloom, Twinkle Thompson, and Phillip Shenk, professional staff members; and Michael Anderson, intern.

Senator COHEN. The hearing will come to order.

Our hearing this morning is on H.R. 3731, a bill to amend the Judgment Funds Distribution Act of 1973. The act was enacted in 1973 to provide a system and a process for the development of plans to provide for the use and distribution of funds awarded to Indian tribes and groups by the Indian Claims Commission or the U.S. Court of Claims.

Under the existing act the Department of the Interior has 180 days after funds are appropriated in which to consult with effected Indian entities and to develop a plan for the use and distribution of the judgment funds. Over the years since its enactment, it has become increasingly clear that the time limits imposed by the 1973 act are simply too short to allow the development of the necessary plans.

Therefore, it is mandatory that Congress amend the act, or we will soon find ourselves back in pre-1973 times, when every Indian judgment required separate legislation to provide for the distribution of the funds.

At this point, without objection, I will place a copy of H.R. 3731 in the hearing record.

[The bill follows:]

II

97TH CONGRESS
1ST SESSION

H. R. 3731

IN THE SENATE OF THE UNITED STATES

DECEMBER 15 (legislative day, NOVEMBER 30), 1981

Read twice and referred to the Select Committee on Indian Affairs

AN ACT

To amend the Act of October 19, 1973 (87 Stat. 466), relating to the use or distribution of certain judgment funds awarded by the Indian Claims Commission or the Court of Claims.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of the Act of October 19, 1973 (87 Stat. 466; 25 U.S.C. 1401 et seq.) is amended to read as follows:

"SEC. 2. (a) Within one year after appropriation of funds to pay a judgment of the Indian Claims Commission or the Court of Claims to any Indian tribe, the Secretary of the Interior shall prepare and submit to Congress a plan for the use and distribution of the funds. Such plan shall include identification of the present-day beneficiaries, a formula for

the division of the funds among two or more beneficiary entities if such is warranted, and a proposal for the use and distribution of the funds. The Secretary shall simultaneously submit a copy of such plan to each affected tribe or group.

"(b) With respect to judgments, for which funds have been appropriated prior to the enactment of this amended section, but for which use or distribution has not been authorized by enactment of legislation or by an effective plan under this Act, the Secretary shall prepare and submit such plans within one year of the enactment of this amended section.

"(c) In any case where the Secretary determines that the circumstances do not permit the preparation and submission of a plan as provided in this Act, he shall submit to the Congress within the one-year period proposed legislation to authorize use or distribution of such funds, together with a report thereon.

"(d) In cases where the Secretary has to submit a plan dividing judgment funds between two or more beneficiary entities, he shall obtain the consent of the tribal governments involved to the proposed division. If the Secretary cannot obtain such consent within one hundred and eighty days after appropriation of the funds for the award or within one hundred and eighty days of the enactment of this amended section, he shall submit proposed legislation to the Congress as provided in section 2(c).

"(e) An extension of the one-year period, not to exceed one hundred and eighty days, may be requested by the Secretary or by the affected Indian tribe, submitting such request to the committees through the Secretary, and any such request will be subject to the approval of both the Senate Select Committee on Indian Affairs and the United States House of Representatives Committee on Interior and Insular Affairs.".

SEC. 2. Section 3(b)(3) of said Act is hereby amended by adding at the end thereof the following proviso: *"Provided,* That such funds may be disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the minor or legal incompetent's health, education, welfare, or emergencies under a plan or plans approved by the Secretary and the tribal governing body of the Indian tribe involved.".

SEC. 3. Section 5 of said Act is amended by adding the following subsections:

"(c) Within the sixty-day period and before the adoption of any resolution disapproving a plan, the Secretary may withdraw or amend such plan: *Provided,* That any amendments affecting the division of an award between two or more beneficiary entities shall be subjected to the consent of these entities as provided in section 2(d) of this Act. Any such amended plan shall become valid at the end of a sixty-

day period beginning on the day such amendment is submitted to the Congress, unless during such sixty-day period, either House adopts a resolution disapproving such plan as amended.

"(d) Once a plan is withdrawn before the end of a sixty-day period, the Secretary has until the expiration of the original one-year deadline to resubmit a plan to the Congress. Such plan shall become valid at the end of a sixty-day period beginning on the day such new plan is submitted to the Congress, unless during such sixty-day period, either House adopts a resolution disapproving such plan.".

SEC. 4. Section 7 of said Act is amended to read as follows:

"SEC. 7. None of the funds distributed per capita or held in trust under the provisions of this Act shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Se-

curity Act or, except for per capita shares in excess of $2,000, any Federal or federally assisted program.".

Passed the House of Representatives December 15, 1981.

Attest: EDMUND L. HENSHAW, JR.,
Clerk.

By THOMAS E. LADD,
Assistant to the Clerk.

Senator COHEN. There are a number of concerns which I expect will be addressed today. One deals with the problem of a one-House veto of the proposed plans. Another deals with the utilization of funds for minors and incompetents. A third involves the exemption of judgment funds in determining eligibility for federally assisted programs other than under the Social Security Act. A fourth involves possible impact of the act on cases in which Indian tribes are engaged in negotiations relating to lands which were the subjects of the judgments.

Our first witness today is Assistant Secretary Ken Smith of the Department of the Interior.

Welcome, Mr. Smith. Please proceed.

STATEMENT OF KENNETH L. SMITH, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY THEODORE KRENZKE, DIRECTOR OF INDIAN SERVICES

Mr. SMITH. Thank you. Good morning, Mr. Chairman. It is a pleasure to be here this morning to discuss with the committee H.R. 3731, a bill to amend the Indian Judgment Funds Distribution Act.

I have with me this morning Mr. Ted Krenzke, who is the Director of Indian Services for the Bureau of Indian Affairs. He will assist me in answering any questions which may come up.

My prepared statement was sent to the committee yesterday. With your permission, I would like to summarize the written statement.

Mr. Chairman, we support H.R. 3731 but with two amendments to the bill. The chief reason for our support of the bill is to speed the process of the use and distribution of the awards and to lessen the workloads on Congress and the administration.

I want briefly to discuss the amendments which we are suggesting to the bill.

The first is that we recommend deletion of section 2 of the bill. Section 2 would amend the 1973 act to allow funds held in trust for minors or incompetents to be spent under a plan by their parents or legal guardians for health, education, welfare, or any emergency purposes. We believe the amendment is too broad.

We have already amended our regulations to strengthen and clarify the statutory concept of protecting and preserving minors' shares. The regulations were developed in consultation with Indian tribes and have lessened the confusion over how much and under what circumstances minors' funds may be expended.

The regulations, which many tribal leaders and parents have supported, provide for the preservation and enhancement of minors' per capita payments in excess of $100 until the beneficiary reaches the age of 18. It is our view that our role as trustee is best performed by holding and investing the funds until the minor is 18 years of age.

Second, we recommend that section 5 of the bill be amended to remove the one-House veto provision. We have attached a proposed amendment to that effect with my statement.

The Attorney General has determined that legislative vetoes intrude on authorities of the President and are unconstitutional. Two separate U.S. Courts of Appeals have recently reached similar conclusions. Plus, the Justice Department feels that section 5 is unconstitutional because it fails to conform to the proper procedure for enacting laws.

In conclusion, I want to emphasize that it is in all of our interests that these funds move as rapidly as possible to the proper beneficiaries and that the use of the funds be carefully worked out for the greatest benefit of the Indian recipients.

With the inclusion of the foregoing amendments, we recommend enactment of H.R. 3731.

That concludes my statement, Mr. Chairman. We would be glad to respond to any questions you may have.

Senator COHEN. Without objection, your written statement will be inserted in the record at this point.

[The prepared statement follows:]

PREPARED STATEMENT OF KENNETH L. SMITH, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the committee, I am pleased to present the views of the Department of the Interior on H.R. 3731, a bill "to amend the act of October 19, 1973, relating to the use or distribution of certain judgment funds awarded by the Indian Claims Commission or the Court of Claims."

We recommend enactment of the bill, if amended as we suggest.

H.R. 3731, as passed by the House, would amend section 2 of the act of October 19, 1973, to provide for submission by the Secretary of the Interior to Congress of plans for the use and distribution of judgment funds within one year after their appropriation. The Secretary would also be authorized to request an extension of up to 180 additional days to submit such plans. Further, H.R. 3731 would allow the Secretary to submit proposed legislation whenever he determines that circumstances do not permit submission of a plan. With respect to a plan dividing judgment funds between two or more entities, H.R. 3731 would require the Secretary to obtain the consent of the affected groups to a formula for the division of funds. If consent cannot be obtained, the Secretary would be required to submit legislation.

Other amendments to the 1973 act include: (1) A provision which would allow funds held in trust for minors or incompetents to be spent by their parents or legal guardians under certain circumstances and conditions; and (2) a provision which would allow the Secretary to withdraw or amend a plan after its submission to Congress.

A change in the deadline provision is urgently needed if the Indian Judgment Funds Act is to be an effective method of providing for the use and distribution of judgment funds. Prior to 1979, the Department had considered the deadline as directory only and believed that plans could validly be submitted to the Congress after expiration of the statutory deadline. However, the U.S. District Court for the District of Columbia ruled on July 9, 1979, that plans submitted to Congress after the statutory deadline cannot take effect under the act.

To date, over 80 plans have been submitted to Congress and only one has been disapproved by Congress. However, only one third of those plans were submitted within the statutory deadline. Those plans which were untimely submitted but approved by Congress prior to the district court's decision were validated by emergency legislation passed in the 96th Congress.

Currently, plans are in various stages of preparation for approximately 60 awards. However, funds for most of those awards have already been appropriated and, since the respective statutory deadlines have expired, it will be necessary for Congress to enact specific authorizing legislation for the use or distribution of those awards unless the Indian Judgment Funds Act is amended.

One reason for the delays was the large number of awards for which there was no enabling legislation introduced during the period in which Congress and the Department awaited the passage of the Indian Judgment Funds Act and the finalizing of implementing regulations. A second reason is that even under ideal conditions (such as a single beneficiary tribe with a governing body eager to develop a proposal for the actual use of the funds), it has been difficult to meet the statutory deadline. With awards involving two or more beneficiary tribes and descendant entities, meeting the deadline is virtually impossible.

The principal problems encountered, particularly when more than one tribal entity is involved, result from the time needed to: (1) complete research to

identify beneficiary tribes and groups and develop a formula for the division of the funds, and (2) work with the beneficiary tribes in developing and processing tribal proposals for the actual use of their anticipated shares. Assuming that questions of division of funds are resolved in a relatively short time, which is rarely the case, tribes usually experience considerable difficulty in creating proposals suitable for the hearing of record required by the act.

We have been consistent in carrying out the spirit of the law and the policy of Indian self-determination by not holding hearings of record until a suitable tribal proposal has been submitted and reviewed. In the same vein, we have also encouraged tribal governing bodies and judgment fund committees to discuss their proposals at community and general meetings before submitting the proposals to the Secretary.

We recommend two amendments to H.R. 3731. First, we recommend deletion of section 2 of H.R. 3731. Section 2 would amend section 3(8)(3) of the 1973 act by adding a proviso which would allow funds held in trust for minors or incompetents to be spent under a plan by their parents or legal guardians for health, education, welfare and emergency purposes. We believe this amendment is too broad.

Under the existing law, the Department has amended its regulations in order to strengthen and clarify the statutory concept of protecting and preserving minors' shares. These regulations, developed in consultation with Indian tribes, have lessened the confusion over how much and under what circumstances minors funds may be expended. Many tribal leaders and parents have been supportive of these regulations, which provide for the preservation and enhancement of minors per capita payments in excess of $100 until the beneficiary reaches the age of 18.

Unfortunately many Indian communities are faced with high unemployment, absence of formal education, and a constant need by families for money and goods. While we recognize the great pressure this would place on families to use minors' shares for current expenses, it is our view that our role as trustee is better performed by holding and investing these funds until the minor is 18.

Second, we recommend that section 5 of the act be amended to remove the one-house veto provision. Our proposed amendment is attached. The Attorney General has determined that legislative vetoes and similar devices intrude impermissibly on the authority of the President and are unconstitutional. Two separate U.S. Courts of Appeals have recently reached similar conclusions with respect to the constitutionality of legislative veto provisions. Thus, the Justice Department believes that section 5 of the Indian Judgment Funds Act is unconstitutional because it fails to conform to the proper procedures for enacting laws and intrudes on the discretion vested in the executive branch by the act to formulate plans for the distribution of judgment funds. This point also applies to proposed new section 2(e) of the act.

In conclusion, we believe a change in the deadline provision is urgently needed. It is in all our interests that these funds move as rapidly as possible to the proper beneficiaries and that the use of these funds be carefully worked out for the greatest benefit of the Indian recipients.

With the inclusion of the foregoing amendments, we recommend enactment of H.R. 3731.

This concludes my prepared statement. I will be pleased to respond to any questions the committee may have.

AMENDMENT TO H.R. 3731

We recommend that section 3 of H.R. 3731 be amended to read as follows:

"SEC. 3(a). Section 5(a) of said Act is amended by deleting 'either House adopts a resolution and inserting in lieu thereof 'a joint resolution is enacted'.

"(b) Section 5(b) of said Act is amended by deleting 'adoption of a resolution' and inserting in lieu thereof 'enactment of a joint resolution'.

"(c) Section 5 of said Act is amended by adding the following new subsections at the end thereof:

"(c) Within the sixty-day period and before the adoption of any resolution disapproving a plan, the Secretary may withdraw or amend such plan: *Provided*, That any amendments affecting the division of an award between two or more beneficiary entities shall be subject to the consent of these entities as provided in section 2(d) of this Act. Any such amended plan shall become valid at the end of a sixty-day period beginning on the day such amendment is submitted

to the Congress, unless during such sixty-day period, a joint resolution is enacted disapproving such plan as amended.

"(d) Once a plan is withdrawn before the end of a sixty-day period, the Secretary has until the expiration of the original one-year deadline to resubmit a plan to the Congress. Such a plan shall become valid at the end of a sixty-day period beginning on the day such new plan is submitted to the Congress, unless during such sixty-day period, a joint resolution is enacted disapproving such plan."

Senator COHEN. I have a number of questions which I will submit for the record. They principally deal with how many claims may be involved, the number of tribes which are involved, the amounts involved, and so forth, but I will not ask you to provide that information right now. I will ask that you get that information back to me as soon as you can.

Mr. SMITH. I will do so.

Senator COHEN. Without objection, the questions and answers will be made a part of the record at this point.

[The material follows:]

QUESTIONS AND ANSWERS

1. Question: How many Indian claims dockets remain to be resolved by the Court of Claims?

   Answer: Approximately 56 - The number depends on whether the attorneys and the court wish to further subdivide the cases by partially settling cases.

2. Question: What are the names of the tribes or groups which have dockets to be resolved?

   Answer:

1. Chippewa Nation	Docket 19	21. Wyandotte	Docket 212
2. Potawatomi, Michigan and Wisconsin	Docket 28	22. Wyandotte	Docket 213
3. Makah	Docket 60-A	23. Pima-Maricopa	Docket 228
4. Navajo	Docket 69	24. Navajo	Docket 229
5. Sioux Nation	Docket 74	25. Gila River	Docket 236-C D & E
6. Mission, Ricon, et al.	Docket 80-A	26. Pima-Maricopa	Docket 236-F
7. Mission, Soboba	Docket 80-A	27. Gila River	Docket 236-I
8. Mission, Cuyapipe, et al.	Docket 80-A-2	28. Gila River	Docket 236-N
9. Mission Indians	Docket 80-B	29. Navajo	Docket 229
10. Northern Paiute	Docket 87-A	30. Stockbridge Munsee	Docket 300-A
11. Klamath, Modoc and Yahooskin Band of Snake Indians	Docket 100-B-2 and 389-72	31. Oneida	Docket 301
12. Sioux, Crow Creek	Docket 115	32. Quechan	Docket 320
13. Sioux, Lower Brule	Docket 116	33. Western Shoshone	Docket 326-A
14. Sioux, Pine Ridge	Docket 117	34. Shoshone-Bannock	Docket 326-C-1
15. Sioux, Rosebud	Docket 118	35. Shoshone-Bannock	Docket 326-C-2
16. Colville	Docket 178-A	36. Navajo	Docket 353
17. Minnesota Chippewa	Docket 188	37. Pueblo of San Ildefonso	Docket 354
18. Red Lake	Docket 189-A	38. Pueblo of Santo Domingo	Docket 355
19. Red Lake	Docket 189-B	39. Pueblo of Santa Clara	Docket 356
20. Puyallup	Docket 203	40. Pueblo of Taos	Docket 357

41.	Pueblo of Nambe	Docket 358	50.	Menominee	Docket 134-67
42.	Devil's Lake and Sisseton-Wahpeton	Docket 363	51.	Mable Duncan, et al. (Pomo Indians of Robinson Rancheria)	Docket 10-75
43.	Mdawakanton and Wahpakoota	Docket 363	52.	Cow Creek Band of Umpqua	Docket 53-81L
44.	Aleut, St. Paul and St. George Island	Docket 369	53.	Helen Mitchell, Quinault	Dockets 772-71 773-71, 774-71 and 775-71
45.	Wichita	Docket 371	54.	Pueblo of Santo Domingo	Docket 614-80L,
46.	Wichita	Docket 372	55.	Navajo	Docket 256-69
47.	Te-Moak Band of Western Shoshone	Docket 343-70	56.	Navajo	Docket 377-70
48.	Zuni	Docket 327-81L			
49.	Zuni	Docket 161-79			

3. Question: What are the individual amounts estimated to be, minus off-sets?

   Answer: The Bureau of Indian Affairs does not participate in the litigation, thus, we do not know whether the claims will result in awards or the or the amount it will be. Presently seven tribal claimants have advised us that they are in the process of settling the following claims:

Klamath	Dockets	100-B-2 and 389-72	$16,500,000
Shoshone Bannock	Docket	326-C-1	1,600,000
Devil's Lake and Sisseton Wahpeton	Docket	363	138,942
Medawakanton and Wahpakoota	Docket	363	78,058
Medawakanton and Wahpakoota	Docket	363	513,000
Colville	Docket	178-A	7,000,000
Wyandotte	Docket	212 and 213	200,000
Pueblo of Santo Domingo	Docket	614-80L	50,000

4. Question: What are the probable dates of the individual awards (years)?

   Answer: In general we do not know when the cases will be completed, however, the Department of Justice advised us that in addition to the cases that are currently in the process of compromise settlement, the following cases may be completed during Fiscal Year 1983:

AkChin	Docket 235	Potawatomi, Michigan, Wisconsin	Docket 28
Northern Paiute	Docket 87-A	Sioux, Crow Creek	Docket 115
Quechan	Docket 320	Sioux, Nation	Docket 74
White Mountain Apache	Docket 22-H	Mission Indians (Rincon,	Docket 80-A
Lower Sioux (various treaties with the Sisseton and Wahpeton and the Mdewakanton and Wapakoota)	Docket 363	Pala et al.)	

5. Question: How many awards have been made that are awaiting development of a plan or legislation?

   Answer: 83 awards.

6. Question: What are the amounts of the awards and to which tribe will they be awarded?

   Answer:

Tribe or group	Amount of Award
Assiniboine	$ 18,564,638.16
Cheyenne-Arapaho	400,000.00
Blackfeet	31,577,719.00
Gros Ventre	308,150.18
Chinook	48,692.05
Chippewa, Lake Superior & Mississippi	11,137,303.00
Chippewa, Ottawa	10,109,003.55
Chippewa, Bay Mills & Sault Ste. Marie	40,233.00
Chippewa, Red Lake	8,741,401.00
Chippewa, Saginaw	4,301,753.00
Chippewa, Rocky Boy	25,000.00
Choctaw	250,000.00
Colorado River	850,000.00
Coast Indian Community	47,500.00
Cowlitz	1,550,000.00
Creek (Oklahoma & Eastern)	8,936,676.79
Creek (Oklahoma)	1,300,000.00
Crow	247,209.39
Hoopa Valley	669,150.51
Hopi	5,000,000.00
Kenaitze	45,000.00
Maricopa-AkChin Reservation Indians	141,730.68
Menominee	15,000.00
Miami	1,259,147.80
Mississippi Sioux	1,438,000.00
Navajo	36,800,000.00
Nez Perce	982,905.25

Tribe or group	Amount of Award
Ottawa	2,958,621.97
Paiutes, Northern	221,012.98
Papago	26,000,000.00
Peoria	7,636,768.00
Potawatomi	14,922,846.81
Pembina, Chippewa	52,277,337.97
Pyramid Lake Paiute	1,052,292.80
Seminole (Oklahoma & Florida)	16,050,000.00
Seneca-Cayuga	112,021.12
Shawnee	2,182,882.78
Salt River Pima-Maricopa	13,000,000.00
Sioux Nation (Black Hills)	105,994,430.52
S'Klallam	385,820.00
Squaxin	7,661.82
Standing Rock	1,500,000.00
Steilacoom	9,146.32
Stillaguamish	48,570.00
Tlingit & Haida	85,812.59
Utes	1,638,720.24
Warm Springs	1,225,000.00
Western Shoshone	26,145,189.89
Wyandot	2,908,103.81
Yakima	1,306,390.11
Yankton	74,603.09
TOTAL	$422,529,446.18

7. Question: How many awards have been made that are on deposit with Treasury awaiting disbursement pursuant to a plan or statute? What tribes or groups are involved and what are the amounts in question? What are the causes of the delays?

   Answer: We do not have this information readily available. Since an extensive and time-consuming search of various sources would be required to obtain this information, we would prefer to provide this information at a later date only if the Committee feels this information is necessary in considering the proposed amendments to the 1973 Act. With respect to the delays, we find that preparation of the Secretary's per capita payment rolls and, in some cases, tribal refusal to develop a plan are causes for delays in the disposition of judgment funds.

8. Question: What process is followed by the Interior Department in developing a plan? Does it include the following criteria:

   a) Survey of economic development potential?
   b) Investment possibilities?
   c) Long term program possibilities?

Answer: The tribe is notified through the Results of Research Report that the Bureau's technical advisors are readily available to help the tribe develop a program for the use of its judgment funds within the philosophy of tribal self-determination. In developing long-term program possibilities or long-range investments, the tribal leadership is generally faced with strong demands from its constituency for per capita payments up to the 80 percent allowed by the 1973 Act. In developing a Secretarial plan, the Bureau utilizes a socio-economic report (copy attached) for evaluating tribal programming needs. This report is prepared by the Area Director with major input from the tribe and agency officials. With the exception of small awards, it has proven very difficult for the tribal leadership to suggest utilizing over 20 percent of the award funds for programming even when the need is urgent.

9. Question: What criteria does the Interior Department use in deciding whether to submit legislation through Congress? How many judgment plans is the Department going to submit as legislation? What are the names of the tribes affected?

Answer: These questions are answered under the assumption that the amendment under consideration will be enacted. Legislation would be submitted to Congress in lieu of a Secretarial plan (1) in those awards to be shared by two or more tribes where there is no agreement regarding the manner of division; (2) in awards to tribes where the minority opposition to the award or the proposed use of the funds is so active that the tribal council cannot propose an adequate program for the use of funds; (3) in those awards where legal action prevents submitting a timely Secretarial plan; and (4) in those cases where the majority of tribal members remain adamantly opposed to accepting a monetary award in the hopes of either having the land returned or land substituted in lieu of the monetary award. In this last category is the false feeling that acceptance of a monetary award constitutes the actual act of selling the land claim.

We have identified the following five awards that in our estimation will require legislation irregardless of the passage of the amendments to the 1973 Indian Judgment Funds Act.

1) Sioux Nation (Black Hills) (C.C. 148-78) $105 million. The case has been delayed through court action. There is also a strong feeling that there should be a land settlement in lieu of a monetary award in whole or in part.

2) Western Shoshone (326-K) $26 million. This docket is still held up by court action. In addition there is also a strong feeling that there should be a land settlement.

3) Seminole (73 & 151) $16 million. Initially held up by court action. At present there is no agreement between the Oklahoma Seminole and the Florida Seminole regarding the division of the award. A further complication is the exclusion of the Seminole Freedmen from the award.

4) Pembina, Chippewa (113, 246, 191, 221) $52 million. Factionalism within the several tribes sharing in the award revolving around ancestry and blood quantum designations.

5) Hopi (196) $5 million. Strong factionalism within the tribe and a feeling by many that to accept the award is to sell the land.

We would anticipate there will be several other awards, which have not yet been decided by the U.S. Court of Claims, that will fall within the category of requiring legislation when finally adjudicated.

OUTLINE FOR AREA SOCIO-ECONOMIC REPORT FOR EVALUATING TRIBAL PROGRAMING NEEDS FOR THE USE OF FUNDS IN DOCKET(S)____

A. Nomenclature

1. Name of Tribe or Group
2. Name of Reservation

B. Population

1. Tribal Membership
2. On Reservation
3. Off Reservation
4. Others on Reservation

C. Land

1. Location
2. Historical
3. Climate
4. Ownership
5. Present Land Use

D. Tribal Administration and Government

1. Governing Body
2. Budget
3. Member Civic Participation
4. Intergovernmental Relations
5. Leadership
6. Tribal Attorney
7. Law and Order

E. Economic Activities and Potential

1. Reservation Development
2. Labor Force
3. Employment Population by Village or Local Community
4. Income from Reservation Resources
5. Income from Employment
6. Income from Agricultural Resources
7. Income from Resources and Employment
8. Median Income Surrounding Communities

F. Health

G. Welfare

SOCIO-ECONOMIC REPORT (CONT'D)

H. Education

1. Level
2. School Age Population
3. Drop-Out Rates
4. School Facilities
5. Special Programs
6. Progress
7. Projects

I. Housing

1. Existing Conditions
2. Housing Authority
3. Planning

J. Tribal Affairs

1. Problem Areas
2. Cultural and Geographic Isolation
3. Non-Indian Community, Relations With
4. Bureau Appropriations
5. Tribal Complaints

K. Attachments and Exhibits

Senator COHEN. What process is followed by the Interior Department in developing plans? Specifically, what I have in mind is this. Does it include the following criteria: a survey of economic development potential, investment possibilities, and long-term program possibilities. What do you use for criteria?

Mr. SMITH. I believe I will let Mr. Ted Krenzke answer that question.

Mr. KRENZKE. With respect to that process, we require that each tribe submit, in essence, a socioeconomic development analysis of their situation on their individual reservations. We ask, in terms of that report, that the tribe consider the programing aspects.

However, it is also true that by and large we have deferred to the tribes' desires with respect to specific programing in the spirit of Indian self-determination.

Senator COHEN. Does the Interior Department have any guidelines or criteria expressing what you would like to see?

Mr. KRENZKE. We do not have any standards as such. Usually, what happens with respect to the awards is that the agency superintendent is out there working with the tribe on an ongoing basis. He is working with them in terms of the economic development of the reservation. In the process, they are encouraged to work with the tribe to consider the economic needs in the process. We do not have any specific standards coming from the Office of the Assistant Secretary or from the Washington office to the tribes or to the Bureau's agency staff in that regard.

Senator COHEN. The staff has a question as to whether or not you recommend that per capita distributions of funds be increased. We are told that those funds are just being dissipated.

Mr. SMITH. Mr. Chairman, I would prefer to see tribes spend a greater percentage on their programs, rather than giving it out as per capita payments because we all know that it will go further if they invest in the reservations. They can develop the reservations a lot better if they invest in it.

On the other hand, we feel very strongly that we should not make a local decision for a tribal government. If we are to follow through on self-determination, I think we have to abide by the decisions which the tribal governments make.

It is an awkward situation. We are between a rock and a hard place.

I think that most tribal councils want to do the best thing for their people. On our reservation, when we prepared our judgment plan, we held several meetings with the tribal members. Most tribal members put a lot of pressure on our politicians for per capita payments. It makes it very difficult for local governments to hold hard and fast to it.

Senator COHEN. Is there not something in between self-determination and the absolute fiduciary obligation to manage trust assets in a fiduciary capacity? The reason why I asked you the question initially is that I want to know whether there are criteria. Could you not have certain criteria developed and allow enough flexibility for tribes to work within that framework and yet not dictate what they have to do? Could you not set certain criteria so that you do not have the dissipation of the quick capital assets rather than long-term development?

Mr. SMITH. I think so. When I first looked at it, we talked about it a little bit. My first thought was that it would be nice if it were 50–50.

As more and more plans are coming forward, we see several tribes which are programing 100 percent of their funds to go into investments or programs. We see a lot of tribes which still have 20 percent and 80 percent.

The law, as I understand it, reads that we have to program at least 20 percent. I presume that the Secretary does have the authority to submit a plan which would be 50–50. I presume that we do have that authority.

On the other hand, we get a lot of pressure, too.

Senator COHEN. As I recall the *Maine* case, we did not have any per capita distribution. It all went into the purchase of land and economic development plans for the future to create long-term jobs.

It seems to me that it is not enough to say that we will try and abide by self-determination. It is rather like home rule in the District of Columbia, but it is not absolute. There come times when we have to exercise some restraint, or feel that we have to exercise some restraint.

I would think that, consistent with a fiduciary's responsibilities under the law, that you could structure something which takes into account the long-term advantage of investing the money rather than simply parceling it out at certain levels, having it spent until there is nothing left.

Mr. SMITH. Mr. Chairman, I might add that we are giving some thought to whether we should bite the bullet or not on some of the plans which we are sending forward. We may try to do that but we are thinking a lot about it, especially given the state of the economy. We are looking at the long term.

Senator COHEN. Tell me again your objection to section 2, the disbursement of funds to the parents or legal guardians. What is your objection to that?

Mr. SMITH. We feel it is being handled adequately right now. I think the majority of the tribes do support the minors' trust fund and that it sets aside funds for minors. I think that would be a better way to go, rather than making it discretionary or having the Secretary or the tribal government submit a plan for that purpose. I think it is preferable to having the money accessible to the guardians or parents.

I think, once we open that hole, the whole thing may crumble. It depends upon how it is administered. I would rather see something which would force us to hold the money for the minors until they reach 18.

Senator COHEN. What criteria does the Interior Department use in deciding whether or not to submit legislation to Congress?

Mr. SMITH. Ted, do you want to respond to that?

Mr. KRENZKE. Generally speaking, we would, in nearly all cases, prefer to forward plans to Congress for approval without going through a legislative process.

However, we support the language in the act, which would require the submission of legislation in those instances wherein the tribes are unable to agree on a division of the funds.

There are also other situations which are controversial for one reason or another. They can vary from award to award. Where controversies arise which simply cannot be handled on the basis of an agreement between the tribe and the Bureau or between the several tribes

which are involved in a multitribal situation, we believe the proper way to handle it is to submit it to Congress in the form of legislation.

Senator COHEN. How many judgment plans does the Department have or how many will you submit to Congress this year?

Mr. KRENZKE. I am not sure how many we will submit this year, but of the 57 which are pending, there are five which we have been able to identify for which we believe legislation will be required. There are two of them which are currently up here before the Congress: The Pembina Chippewa and the Seminole. We have three others which we have been able to identify: A Hopi award, the Black Hills award, and the Western Shoshone. These are the awards which we are able to identify at the present time.

As we get a little bit farther along, perhaps there are one or two others which are now before us, which we may decide need legislation.

Senator COHEN. What is the current status of eligibility for Federal aid and assistance programs, outside of social security?

Mr. SMITH. I am not certain. Ted, do you know?

Mr. KRENZKE. Generally speaking, outside of social security, to my knowledge all of the income from any source which an individual might receive is considered as income for purposes of eligibility.

In terms of awards which have been made recently and distributed on a per capita basis as a result of claims submitted to the Congress, the money has been considered as income except for social security and for income tax purposes.

Senator COHEN. How many of the plans include per capita distributions in excess of $2,000?

Mr. KRENZKE. Our best estimate is that, of the approximately 80 plans which have been submitted since the passage of the Judgment Funds Act of 1973, there are about a half dozen which have had awards in excess of $2,000.

We also estimate that there is probably another half dozen in the 57 I mentioned which are pending at the moment. That is rough, but it is fairly close.

Senator COHEN. How does that affect an individual's right to obtain food stamps or other federally sponsored programs? Is that included as income?

Mr. KRENZKE. It is included as income. The program of greatest concern is the food stamp program. In connection with the food stamp program, the money is included as a consideration of income.

Still, as I understand the way the system works, until such time as the money would be considered income on a monthly basis over a period of time and until it expires, then the person loses his eligibility for food stamps. That depends on the size of the award.

Many of the awards are very small. If there is a stoppage of something like food stamps, it would be for the period of 1 month or less.

Senator COHEN. Those are all of the questions I have for you now. I request again that you submit the answers as quickly as you can to the others which I have for the record.

Thank you very much for coming this morning.

Our next witness is Mr. Larry Cournoyer, chairman of the Yankton Sioux Tribe of Wagner, S. Dak.

STATEMENT OF LARRY COURNOYER, CHAIRMAN, YANKTON SIOUX TRIBE

Mr. COURNOYER. Good morning, Mr. Chairman.

First, we would like to thank you for this opportunity to testify on H.R. 3731. We are concerned with section 2 of the proposed legislation. The Indian tribal members, back in April of this year, approached me with a petition. There are approximately 300 signatures on the petition. They asked for the release of the minors' share of the judgment funds based on the economic conditions on the reservation.

We have had a severe cutback in CETA. We have had severe cutbacks in all of our social programs. We have no economic development base out there whatsoever. We feel that the economic times are such that the people can no longer afford to let their children suffer as a part of it if there are funds available to them which rightfully belong to them. We would like to see them benefit from the funds now.

There is an effort to collect rents. There is an effort to cut back on our general assistance; that is, on the Bureau of Indian Affairs' dollars. I have statements from some of the people and a petition from 300 of them, saying that they have six or eight people in the family and get $300 to $400 a month; $163 of that goes to paying the rent. After that, they do not have the money to buy what their children need for school. They do not have money for school clothes. They do not have money to buy them glasses. They do not have money to buy them any of the basic things which life could provide if they had jobs; that is, some of the things which they could then buy their children. A lot of these people are living off commodities for the bare necessities.

I will submit the petition from the parents as part of my testimony today.

Senator COHEN. Without objection, it will be inserted in the record at this point.[1]

Mr. COURNOYER. I also wrote to Mr. Ken Smith, the Assistant Secretary, at the Department of the Interior on May 14, a letter with our concerns and made a statement to the effect that the parents would like the release of these funds and that we are aware that there are regulations preventing it at this time. We submitted a copy of the petition to him as well. We have made the Bureau aware that we are not satisfied with the way the law reads at the present time.

I do not think, at the time when the law was enacted, that our tribe was consulted. I believe the statement was made that the tribes were consulted and that the parents were consulted in terms of holding back these funds for the minor children. I do not believe that all of that is proper because I do not believe that our tribal officials, our parents, or the children were contacted with regard to holding up the funds under the law.

Concerning that portion of the bill, we would like to see those funds released.

Senator COHEN. How much would it amount to?

Mr. COURNOYER. Most recently, the 18-year-olds who have been getting their money have been getting about $3,300 apiece.

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[1] Retained in committee files.

We had about four judgments, but since the enactment of this law, we have had about three judgments which have been held for the minors' accounts. With interest, they are receiving about $3,300 apiece.

We estimate the total package, which would benefit the Yankton Sioux Tribe, to be quite substantial.

They are talking about a plan. We also feel that that is necessary, that is, some sort of plan which would allow parents to periodically draw the money out to benefit the children for school, for their health needs, and for their education. I do not think that anyone is talking about taking the money and having a field day for the parents with it. They are talking about providing for the needs of their children.

When I first began to discuss this with some Bureau employees back in April and May—that is the local Bureau people—inasmuch as they all have jobs in the Government, they expressed some feeling that the money should not go out to these people. However, on our reservation there is 87 percent unemployment.

I contacted some of the parents after I got back and asked them to give me some statements from some of their children which I could take in with me. I thought I might use them as part of the testimony which I wanted to give, so that the statements would be a part of the record. Perhaps Congress could then understand that it is not only the parents, it is the youth who are suffering. They are interested in helping now, in whatever way they can.

Senator COHEN. Let me ask you whether or not it is open to you now to petition the trustee. Suppose your son or daughter needed glasses and you could not pay for them. Would it be open to you to petition the trustee for an application for medical expenses, eyeglasses, or whatever it might be? Can you not do that now?

Mr. COURNOYER. No. If we are able to do it, we are not aware of it. No one has been able to get at any per capita money for any emergency medical, educational, or social need since the time of enactment of this law.

Senator COHEN. Usually, when there is a fiduciary situation, the trustee has an obligation, obviously, to invest wisely and through a prudent-man standard, but, as I understand it, they can also allow some of the money to go for extraordinary medical expenses.

Mr. COURNOYER. I think that is one of the things which section 2 of the law says, and it says it openly. It says that the tribal council and the Assistant Secretary would have the opportunity to review a plan which would allow for the withdrawal of the funds as needed for health, education, and welfare. That is why we are interested in it.

Senator COHEN. What the Interior Department is concerned about—I think, with some justification—is that the money will be spent because of the hard times and all of the cutbacks in programs, which have been made—that the money will be spent for the benefit of all of the family, whether it is for food, clothing, or whatever; and that by the time the child reaches 18, there will not be anything left.

Mr. COURNOYER. In some cases that may be entirely possible, but I think that some of the older youth—I have some statements here from children who are 16 or 17 years old. They say that by the time they reach 18 years of age, they can find a job and help their parents in that way to survive, they will do it. Therefore, why not release the funds to them now to help them help their families, help them with their school-

ing, help them with their last years of high school, help them to complete their educations, help them to get eyeglasses, and that sort of thing.

I have over 100 letters here from individual youths. They have been collected only over the last couple of weeks, since I made a decision to come here about this bill. I have three or four short ones which I would like to read and then submit the rest for the record for review by Congress, if that is alright with you.

I have one here which says:

Dear Congressman: I am pressing for release of my dollars. I am 12 years old, and I have crooked teeth. PHS Hospital does not have money for braces. I would like to get braces. Thank you.

It is signed Brian K. Hart.

I have another one here which says:

Dear Congressman, I need my money for some school clothes, school supplies, and other things.

That was written by a 9-year-old girl.

I have another one from a girl who is in high school. She is going to a private school. She says:

To Whom It May Concern: I would like to press part of my claim so I could buy some school clothes and pay for my tuition at St. Mary's Episcopal School. I need to buy my own uniforms for school. Thank you very much.

It is signed Cheryl Cournoyer.

I have another one which says:

Dear Congressman: My name is Celeste Sitting Crow. I am 6 years old. I am in the second grade. Please release my money to my mother. I would like to have clothes and shoes. I need a bike. I need a bed. I don't like to sleep with my sister. She likes to kick me. Thank you.

It is signed Celeste Ray Sitting Crow.

I have another one here from a 14-year-old boy. It says:

Dear Congressman: I am writing to you in regards to my claims money. Being as it is now with everything is so high, I would like to request all of it. We are now living off social security from our deceased father. My mother worked on CETA but got layed off. Employment around here is hard to find. There will be five of us going to school, and we will need the money for clothes, shoes, coats, and three of us wear glasses that need changes which we cannot afford.

Also, we have to start paying for our lunches and sportswear. We also need bedroom furniture. It would be nice to have something new and different for once. So, in closing, I hope you will help us families in need. Thank you for reading my letter.

That is signed by Jeffrey Patterson, of Wagner, S. Dak.

Those are samples of the letters which were given to me.

Here is another one:

To Whom It May Concern: I am requesting some of my Yankton Sioux claims. I am in high school. Because I am in need of school clothes, bedroom set, eyeglasses, and other necessities, for what I live on is my deceased mother's social security, but that is not much to provide my needs and my sister and brother's needs. We do not have parents to support us, and I hope you understand our need of money. Thank you.

It is signed Andrea Hoolpoppi [phonetic].

The letters go on and on like that from the youth. Their needs are not being met. I would like to submit their letters as part of my testimony and make them available for the review of the Congress. I do believe

that they are representative of the youth there. I believe I could get a lot more of them.

Senator COHEN. Without objection, the letters will be inserted into the record at this point.[1]

I have talked with another tribal chairman. Their council just received a payment this past summer. They said that they were interested in this bill and the passage of it.

Of course, we did not know what the administration's stand would be on that particular section.

I do feel it is necessary. It is vitally important. Economic conditions almost make it mandatory, in my opinion, to see that the youth are taken care of.

I do not see what difference it makes if we develop a plan which provides the money for the youth as they go through school to provide for their medical needs and eyeglasses. Indian Health Services provides for some of these things, but they are also on a limited budget so they have cut back on things like eyeglasses, braces, and dentures. That kind of thing is not available any more, so the people have to buy them themselves. They are the things which they would like to get.

As I stated before, it is almost essential because of the hard times that the money be made available to those people so that they can provide for the needs of their children. They are asking only for a plan to be approved by the Assistant Secretary. They are not asking for a wide open gate to allow them to pull the money our whenever they need it.

We are asking for your consideration and support of section 2 of the bill, and we support the rest of the bill.

Thank you very much.

Senator COHEN. Thank you very much for your testimony.

Our next witness is Mr. Steven Tullberg of the Indian Law Resource Center in Washington, D.C.

STATEMENT OF STEVEN TULLBERG, INDIAN LAW RESOURCE CENTER

Mr. TULLBERG. Thank you, Mr. Chairman.

For the record, by name is Steven Tullberg. I am a staff attorney with the Indian Law Resource Center.

The Indian Law Resource Center represents and works closely with a number of Indian tribes and nations, which are deeply concerned about protecting their land rights and land claims from extinguishment or impairment by virtue of payment of Indian Claims Commission awards. Among those Indian tribes and nations are the Traditional Seminoles; Western Shoshones; Hopis; Traditional Hopi Leaders; Sioux; the Six Nations Confederacy, including the Tonawanda Senecas and the Oneidas. All of them are concerned directly with certain provisions of this amendment, H.R. 3731.

We brought suit in the case of *Osceola* v. *Andres*, one of the 1979 Seminole cases, which resulted in the establishment of the principle that the time limits under the Judgment Funds Distribution Act are mandatory, and which also established that virtually all of the cases which had been in the hands of the Interior Department from 1973 to

[1] Retained in committee files.

that time had failed to meet the statutory deadline. In substantial part, it is that litigation which resulted in the amendment presently being considered by Congress.

There are two points which I would like to briefly address.

The first is a concern we have with section 2(b) of H.R. 3731, which would relieve Interior of its prior statutory time limits and give a fresh opportunity to prepare an administrative plan in lieu of the legislative route which would otherwise be required.

In most of the cases—I understand from the testimony of the Government that there may be some 57 cases—the overwhelming majority of those cases present no problem, and we have no concern over them.

However, there are a few cases, problematical cases, or as the Government has just testified, controversial cases, which we believe clearly require the direct legislative approach; that is, plenary consideration by committees and by Congress, rather than an administrative plan approach which is otherwise regularly available.

Senator COHEN. What is the reason for that?

Mr. TULLBERG. The few controversial cases with which we are most concerned——

Senator COHEN. Please identify those about which you are concerned.

Mr. TULLBERG. They are cases which have been partially identified by the Government, Mr. Chairman; cases involving the Traditional Seminoles; the Western Shoshones; the Hopis; the Sioux; the Six Nations, particularly the Tonawanda Senecas at this point, and down the road a bit, perhaps, the Oneidas.

Senator COHEN. Are they not the very ones which they have indicated that they intend to have come before Congress?

Mr. TULLBERG. It appears that four of the cases have been indicated. Our concern is that the indication be very clear and be set in concrete, so that we do not run into the problem down the road of some lower level administrators in the Bureau of Indian Affairs preparing an administrative plan which may gain momentum, when everyone will be scrambling around Congress trying to bring a resolution to stop it.

Senator COHEN. Why do you not, either now or later, identify those which you think have to have a congressional resolution, and we will match that with what the Interior Department intends to do and see whether we can come to an agreement.

Mr. TULLBERG. I think that would be very appropriate, Mr. Chairman.

Senator COHEN. Without objection, the list will be inserted into the record at this point.[1]

Mr. TULLBERG. Our recommendation on those cases is that Interior be asked to give a precise list which we could then look at and seek to comment upon.

Senator COHEN. I do not think that that will be a problem.

Mr. Smith is still here in the audience.

Mr. TULLBERG. It appears that we have general agreement on the approach and on the need.

For the record, I would like to point out that our fundamental concern goes to the issue of the threat of extinguishment or impairment which may come about by virtue of section 70(u) title 25 United States

[1] Retained in committee files.

Code. That is the Indian Claims Commission Act. It discharges the United States from any related claims upon payment of the Indian Claims Commission awards.

Payments of these awards potentially and arguably impair the right to litigate or negotiate a land claim.

I might also point out that the threat of impairment or extinguishment, which has been controversial literally for decades, now appears to be quite clear and is reflected in legal position papers which have been prepared by Solicitor Coldiron on August 6, 1981, and by Assistant Attorney General Carol Dinkens on July 27, 1981. I have already supplied copies of them to the committee, and I ask the chairman to permit them to be included in the hearing record.[1]

Senator COHEN. Without objection, so ordered.

Senator COHEN. Do you have an opinion with respect to section 2?

Mr. TULLBERG. I have no opinion.

The only other issue I want to address at this point is the issue of the Government's recommendation that a joint congressional resolution be required to dislodge any of the plans.

Such a provision would give virtually complete control over the plans to the Department of the Interior. I can hardly conceive of a case wherein, within a 30- or 60-day period, an Indian tribe or nation could mount a lobbying effort to dislodge one of the plans by obtaining a joint resolution of Congress. It is a mammoth task.

It would be difficult enough to obtain a resolution from one of the Houses. This issue of the joint resolution was raised in the House testimony and was not included in the House bill.

The testimony presented today by the Government raises some new issues with respect to a joint resolution, as opposed to a single-House resolution. I respectfully submit that there is a need to have some study on it and certainly some Indian input before we make a step which would further the already strong administrative control over the plans.

Beyond those two points, the need to specify and have clearly understood in the record the preclusion of certain administrative plans with respect to specific controversial cases and the need to have further study of the joint resolution proposal, I have no further testimony.

Senator COHEN. Thank you very much, Mr. Tullberg.

The hearing stands adjourned.

[Whereupon, at 10:20 a.m., the hearing was adjourned.]

[1] Retained in committee files.

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